

REMARKS

I. Introduction

Claims 1-36 are pending in this application. Claims 1-25, 27-32 and 34-36 were rejected under 35 U.S.C. 103(a) as being unpatentable over Busche et al. (U.S. Published Appln. 2003/0055707, hereinafter “Busche”) in view of Hines et al. (U.S. Patent 6,396,413, hereinafter “Hines”). Claims 26 and 33 were rejected under 35 U.S.C. 103(a) as being unpatentable over Busch in view of Hines, and further in view of Duhamel et al. (U.S. Patent 5,541,585, hereinafter “Duhamel”).

As discussed in further detail below, it is respectfully submitted that it is improper to combine Busche with either Hines or Duhamel to reject the claims.

II. Applicants’ Invention

The present invention pertains in general to the monitoring of the movement within a commercial establishment of participants in a market research study. Signal transmitters are provided at predetermined locations within the commercial establishment and wirelessly transmit location signals associated with those locations. Each of the participants in the market research study are provided with a wireless receiver that is adapted to be carried on the person of the participant and is operative to receive the location signals when in a vicinity of a respective signal transmitter. Two of the independent claims (claims 1 and 3) and various dependent claims provide that the wireless receiver receives a location signal only when in such vicinity. Time data associated with the location signals and a time of reception thereof are stored within the wireless receiver for use in the market research study.

III. The Office Actions and The Cited References

The initial Office Action, dated May 20, 2005, rejected all of the then pending claims 1-22 under 35 U.S.C. 103(a) as being unpatentable over Busche. In response, applicants amended two of the six independent claims (claims 1 and 3), added independent claim 23, and claims 24-29 dependent thereon, and independent claim 30, and claims 31-36 dependent thereon. The applicants also presented in the Remarks section various arguments that the claims are not obvious in view of Busche (see Amendment dated November 21, 2005 (filed November 23, 2005), pages 10-14).

In response, and as mentioned above, the Examiner issued a second, non-final Office Action dated February 28, 2006, which rejected claims 1-25, 27-32 and 34-36 under 35 U.S.C. 103(a) as being unpatentable over Busche et al. in view of Hines et al., and which rejected claims 26 and 33 under 35 U.S.C. 103(a) as being unpatentable over Busch in view of Hines, and further in view of Duhamel.

The Busche Reference

Busche discloses the use of the Global Positioning System (GPS) or enhanced GPS (EGPS) and receivers disposed on shopping baskets to track the paths of customers within a retail environment for the purpose of ascertaining the favorable positioning of products within the retail environment (see Abstract and paragraph [0009]). As discussed in paragraph [0063] of Busche, products reside at specific locations on shelves within the retail establishment and the locations of the placement of products are determined and stored in a database. GPS may be utilized to identify the locations of the placement of the products. Local EPGS transmitters 331-338, such as shown in Figure 3, may also be employed to enhance or replace the satellite signals so that the locations of the products may be identified. As discussed in paragraph [0065], each

shopping basket is fitted with a GPS receiver that records customer movement throughout the store. Alternatively, only preferred customers may be given baskets that include such receivers. When a customer is at a checkout counter, the data stored in the GPS receiver, representing the path of the customer, is transmitted to a computer. The locations of the products within the retail space are associated with the paths of the customers to form a set of spatial relationships (paragraph [0009]).

In the second, non-final Office Action under reply, the Examiner acknowledged that “Busche does not specifically disclose that the receiver being [sic] adapted to be carried on the person.” (second Office Action, page 2). The Examiner relied upon Hines for teaching the use of “a personal monitor system comprising a receiver 20 which is carried on a person for recording the locations and time stamp data …” (second Office Action, page 2).

The Hines Reference

Hines pertains to a personal alarm monitor system intended for use within a correctional facility or in another emergency situation whereby a person to be tracked carries a portable device which receives signals from RFID transmitters placed at particular locations, such as at opposite ends of a hallway, doorways and stairways, within the facility (see Abstract, column 1, lines 13-23; column 3, lines 26-58; Figure 1). As stated in Hines, “The overall operation of the system, however, is intended to provide general position information rather than pinpoint coordinates.” (column 3, lines 55-57).

Each RFID transmitter has a unique identification and the portable device carried by a person receives and stores the unique identification, along with a time stamp, when in close proximity to the transmitter. The stored information forms a record of the general travel pattern of the person within the monitored premises (column 3, line 59 to column 4, line 9).

In the rejection of dependent claims 26 and 33, the Examiner acknowledged that neither Busche nor Hines discloses detecting the presence of a person in proximity to a transmitter which is adapted to not transmit a signal when the person is not detected. (second Office Action, page 8). The Examiner however relied upon Duhamel for disclosing this feature.

The Duhamel Reference

Duhamel pertains to a security system for controlling access through a controlled portal, such as a door, by employing a presence detector which senses the presence of an object near an approach zone located near the door. Upon detecting an object (e.g., a person), a transceiver transmits an interrogation signal and a portable transceiver, carried by such person, responds to the interrogation signal with a response signal. If the response signal is valid, the door is unlocked to allow access through the portal (see abstract; Figure 1; column 1, lines 45-55; column 3, lines 34-44).

IV. The Combination of References is Improper to Reject the Claims

It is well established that, in the absence of any suggestion, direction or motivation in a cited reference or in the cited references as a whole, it is not proper to combine them to reject applicants' claims.

Busche employs the use of GPS or EGPS within a retail store to enable GPS receivers disposed on shopping baskets to track customer movement to ascertain favorable positioning of products. Busche does not disclose the use of RFID type transmitters. Moreover, the GPS receivers disposed on the shopping baskets receive the GPS signals when not in close proximity to particular transmitters transmitting such signals.

Hines is not concerned with product placement, retail stores or market research. Hines employs a position tracking system to monitor the general location of individuals along hallways

for use in correctional facilities and other emergency situations. The system disclosed in Hines is not intended for pinpoint accuracy.

In the second Office Action, the Examiner stated that “It would have been obvious of [sic] having ordinary skill in the art at the time of the claimed invention is made to have a receiver that [is] carried on the person as suggested by Hines, to the participants in a market research study of Busche, for the purpose of more convenience and accurate [sic].” (pages 2-3). First, how would the combination as proposed by the Examiner be more convenient? To the contrary, having shoppers in a retail establishment carry on their persons portable devices, rather than fit shopping baskets with such devices, is more burdensome to shoppers and, thus, less convenient.

Second, how is the proposed modification of the teachings in Busch result in greater accuracy? One cannot even speculate as to how greater accuracy is achieved when the teachings of the cited references are combined. In fact, it appears that since the system disclosed in Hines provides only general position information (not “pinpoint coordinates”), one of ordinary skill in the art would be discouraged, that is, taught away, from using the teachings of Hines to modify the system/method taught in Busche.

Third, Busche expressly teaches certain features that are particularly achieved by fitting shopping baskets with GPS receivers. For example, Busche teaches that “[a]s the shopping basket is returned to a basket storage location within the store, the storage device may be reset in preparation for its use by another patron.” (paragraph [0065]). Hence, one of ordinary skill in the art would not be motivated to modify Busche in the manner proposed by the Examiner.

Fourth, the Examiner incorrectly asserted that Busche discloses applicants’ claimed feature that the receivers in Busche receive “respective ones of the location signals only when in

a vicinity of each of the locations ..." (second Office Action, paragraph no. 2, 4th paragraph). As is well known, GPS and EGPS do not operate in this manner. Rather multiple signals are received, independent of whether the receiver is in proximity with a particular transmitter transmitting a location signal. With respect to this feature, please see applicants' previously submitted arguments on page 11, lines 5-21 (Amendment dated November 21, 2005). Moreover, and although not asserted by the Examiner, it is submitted that one of ordinary skill in the art would not combine the teachings of Busche and Hines to include RFID type transmitters in Busche for those reasons already addressed above.

As for Duhamel, with respect to the rejection of dependent claims 26 and 33, since this reference is similar to Hines, one of ordinary skill in the art would not find it obvious to combine the teachings of Busche with Duhamel, with or without Hines, for those reasons already discussed.

Finally, applicants presented additional arguments with respect to various other claims, on pages 12-14 of the Amendment dated November 21, 2005. These arguments are incorporated herein.

In view of the foregoing, it is respectfully requested that the rejection of pending claims 1-36 be withdrawn. Reconsideration and allowance of this application are respectfully requested.

Respectfully submitted,

By:


Eugene L. Flanagan III, Registration No. 27,634
Mark Montague, Reg. No. 36,612
Attorneys for Applicants
COWAN, LIEBOWITZ & LATMAN, P.C.
1133 Avenue of the Americas
New York, NY 10036
212-790-9200